FORM NLRB-4477

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Sonoma, California)

ESPOSTI CHEVROLET, INC. 1/

Employer

and

MACHINISTS AUTOMOTIVE TRADES DISTRICT
LODGE NO. 190 OF NORTHERN CALIFORNIA,
AUTOMOTIVE MACHINISTS LOCAL LODGE 1596

Petitioner

20-RC-18025 **DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9*(c)* of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3*(b)* of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 2/

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 3/

3. The labor organization*(s)* involved claim*(s)* to represent certain employees of the Employer**.** 4/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c)(1) and Section 2(6) and (7) of the Act. 5/

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9*(b)* of the Act: 6/

> All full-time and regular part-time automotive technicians employed by the Employer at its Sonoma, California facility; excluding all other employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit*(s)* found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit*(s)* who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees

who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by MACHINISTS AUTOMOTIVE TRADES DISTRICT LODGE NO. 190 OF NORTHERN CALIFORNIA, AUTOMOTIVE MACHINISTS LOCAL LODGE 1596.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc**., 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before April 22, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by April 29, 2005**.**.

Dated April 15, 2005

at San Francisco, California

/s/ Robert H. Miller
Regional Director, Region 20

1/ The name of the Employer has been amended to reflect its correct name as shown in the record.

2/ No representative of the Employer appeared at the hearing. However, the record reflects that the Employer and its attorney were served with notice of the hearing and the order rescheduling the hearing by facsimile transmission and by regular mail on March 23 and 29, 2005 respectively. The record also reflects that by letter dated March 30, 2005, the Employer's attorney advised a representative of the Regional office that he had docketed his calendar "for a hearing to be conducted at the NLRB on April 4, 2005, beginning at 10 a.m.," which is the time and place that the hearing was held in this case. In these circumstances, I find that the hearing officer did not commit prejudicial error in proceeding with the hearing in the absence of an Employer representative.

3/ The record reflects that the Employer has an office and place of business in Sonoma, California where it operates a Chevrolet dealership that sells and services new and used vehicles. The Employer purchased the dealership from Bob Nobles Chevrolet and began operation within the year prior to the instant proceeding. Kenneth L. Hallett, Jr., a journeyman automotive repairman, testified that during the month of February 2005, the Employer derived gross revenues of about $80,000. Hallett testified that this amount was based on the figures appearing on the Employer's productivity board for that month and that the productivity board shows on a monthly basis, the Employer's overall earnings as well as a breakdown of earnings for the journeymen repairmen, service writers and sales department. Hallett also testified that the Employer sold 14 new Chevrolets in February 2005, and that the average price of the vehicles was about $35,000. Hallett further testified that the vehicles sold by the Employer are manufactured and shipped to the Employer from points located outside the State of California.

Analysis. The record reflects that the Employer is an auto dealership which sells vehicles to the public and falls under the Board's retail standard for the assertion of jurisdiction, namely that it earn gross revenues of $500,000 on an annual basis and meet the Board's statutory jurisdiction requirement of $2,500 of inflow or outflow across state lines during the same period. See e.g., *Superior Pontiac, Inc*., 271 NLRB 1066 (1984). The testimony of Hallett shows that the Employer has earned $80,000 in gross revenue in a single month and would meet the Board's commerce standard within seven months if its revenues remained consistent with such monthly earnings. Hallett's testimony further shows that the vehicles the Employer sells are manufactured and shipped to it from points located outside the State of California and that any one of these vehicles would satisfy the Board's statutory jurisdictional standard. In these circumstances, I find that the Employer is engaged in commerce within the meaning of the Act and that it

will effectuate the purposes and policies of the Act to assert jurisdiction in this matter. See *Continental Packaging Corp*., 327 NLRB 400 (1998); *Major League Rodeo, Inc.*, 246 NLRB 743 (1979); and *Tropicana Products*, 122 NLRB 121, 123 (1959).

4/ The Area Director for the Petitioner and Local Lodge 1414, Thomas J. Brandon, testified that the Petitioner is an organization in which employees participate and that that it represents employees in bargaining with employers over wages, hours and other working conditions. Brandon further testified that the Petitioner has a collective-bargaining relationship with 42 employers in Northern California and is governed by its bylaws and constitution. Based on such testimony, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

5/ The record reflects that there is no contract bar to this proceeding.

6/ The Petitioner seeks to represent a unit comprised of automotive technicians employed by the Employer at its Sonoma, California facility. Although no Employer representative appeared at the hearing, in his March 30, 2005, letter to the Regional office, the Employer's attorney asserted that to be appropriate, the unit should also include three employees in the classifications of service writers and detailers. The record reflects that at the time of the hearing, there were four full-time and one part-time automotive technicians employed by the Employer. The part-time technician worked about 20 hours a week.

The record reflects that the Petitioner and the Employer's predecessor, Bob Nobles Chevrolet (Nobles), were party to a collective-bargaining agreement effective for the period January 3, 2002 to January 2, 2005, whereunder the Petitioner represented a unit comprised of journeyman automotive repairmen. The record reflects that the Employer purchased the dealership from Nobles on an unknown date in calendar year 2004 and hired three of the full-time and one part-time journeymen automotive repairmen, who had been employed by Nobles and covered under the Agreement. While the Agreement, by its terms, also covered trimmers, metal men, machinists, painters and combination men employed by Nobles, the record reflects that at the time the Employer purchased the business of Nobles, the Petitioner actually represented only the automotive technicians employed by Nobles. There is no record evidence that the Employer employed persons in the classifications of trimmers, metal men, machinists, painters and combination men at the time of the hearing. The record reflects that the service writers, parts department employees who were employed by Nobles were not included in the unit covered by the Agreement. Nor did it include the classification of detailer. For the reasons discussed below, I find that the petitioned-for unit is an appropriate unit for collective bargaining purposes.

Automotive Technician Hallett testified that he is a journeymen automotive technician with 25 years of experience and has been employed by the Employer for about seven months. He testified that he performs all types of automotive repairs for the Employer. According to Hallett, he has been certified as an ASC master technician and by GM, Chevrolet and Isuzu and owns tools valued at about $40,000 that he uses in his work. Hallett further testified that it would require at least eight years of training and experience for an automotive technician to be able to perform the type of work that he does. According to Hallett, all of the Employer's other automotive technicians have a similar level of experience.

The Employer employs two parts department employees who work in a separate area from the automotive technicians. They do not use repair tools but rather use a computer to handle parts. The only interaction between the journeymen repairmen and the parts department employees is when the journeymen repairmen obtain parts from the parts employees. The Employer also employs two service writers who handle the intake of customers' vehicles for servicing and the customer contact and paperwork associated with repair services. The automotive technicians interact with the service writers on the clarification of customer complaints and obtaining customer authorization of repairs. There is no evidence that the Employer employs any detail employees. Neither the parts department employees nor the service writers perform any repair work on vehicles and the automotive technicians do not perform any service writer or parts work. There is no evidence of any temporary or permanent interchange between the journeymen repairmen and the Employer's other employees.

The Employer's journeymen automotive repairmen are hourly paid and work 8 a.m. to 4:30 p.m. The service writers work from 7:30 a.m. to 5 p.m. The record does not disclose how the service writers and parts department employees are paid or the hours that they work. While the record reflects that the journeymen automotive repairmen receive benefits, including medical and dental benefits, it does not show if any other employees receive the same benefits.

The record reflects that about seven months prior to the hearing, the Employer employed a service manager to oversee the journeymen automotive repairmen and the service writers. However, that position was vacant at the time of the hearing and it appears that the automotive technicians, service writers and parts employees were all reporting directly to Owner Carlos Esposti.

Analysis. It is well settled that mechanics who possess skills and training unique among other employees constitute craft employees within an

automotive or motor service department, and therefore may, if requested, be represented in a separate unit, excluding other service department employees. *Fletcher Jones Las Vegas d/b/a Fletcher Jones Chevrolet,* 300 NLRB 875 (1990); *Dodge City of Wauwatosa, Inc*. 282 NLRB 459, 460 n. 6 (1986); *Trevellyan Oldsmobile Co.,* 133 NLRB 1272 (1961); see also *Country Ford Trucks, Inc. v. IAM, AFL-CIO, Local 1528,* 229 F.3d 1184 (D.C. Cir. 2000).

The record in this case shows that the Employer's journeymen automotive repairmen are highly skilled mechanics who possess the skills of craft employees and may constitute a separate unit without the inclusion of the parts employees, service writers or any other employees employed by the Employer. Thus the record reflects that only the automotive technicians perform repair work for the Employer and that they do not perform other types of work or interchange with other classifications. In these circumstances, the record supports a finding that the automotive repairmen constitute a distinct homogeneous grouping of craft employees. I do not find that the evidence of common supervision between the automotive repairmen and other employees alters this conclusion. Accordingly, I am directing an election in the petitioned-for unit.